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Tribute to Judge Irving L. Goldberg: The Consummate Humanist

Diane P. Wood*

One Saturday afternoon in early May of 1974, I was sitting at home studying hard for the spring round of law school exams. When the telephone rang, I answered it somewhat absentmindedly, wondering how quickly I could free myself from the unknown caller and return to the task at hand. To my astonishment, the voice at the other end of the telephone said, "Irving Goldberg here—is this Diane Wood? When can you come to Dallas to talk to me?" With a racing change of gears, I recalled my schedule and suggested a mutually convenient time. When I hung up the telephone, I knew that I had encountered a truly extraordinary person: someone who made immediate contact with others, in every sense of the word; someone of enormous charm; and someone who I sincerely hoped would become an important and lasting part of my life. Fortunately, those hopes were realized when Judge Goldberg tracked me down some two months later while I was visiting a Houston law firm and offered me a clerkship for the year 1975-76.

It would be impossible in such a short space to detail all that I and the others lucky enough to share a part of Judge Goldberg's life learned from him and enjoyed with him. I can only offer vignettes that may add to what others are writing here and elsewhere, in the hope that they will help illustrate the breadth and depth of this individual. The themes will be familiar to those who knew him: his belief in, and commitment to, institutions of a democratic society (and in particular to his beloved Fifth Circuit Court of Appeals); his intellectual breadth; and, above all, his passion for justice and his compassion for others.

As a member of the Fifth Circuit, the Judge worked tirelessly to ensure that the court functioned smoothly as an institution. His hospitality and friendship for his colleagues were legendary on the court, and they set an example that his law clerks would never forget. In our country,

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disagreements are to be respected, not taken personally; one can and should always work with others to find whatever common ground may exist. Yet in the end, one must take a firm stand when principle requires. As is typically the case, the court included judges whose personal views encompassed a wide spectrum of ideologies. Judge Goldberg showed us how little this mattered in the vast majority of cases that come before the courts of appeals, cases in which the key questions usually turn instead on the meaning of statutes and the use of correct procedural mechanisms. Where agreement was impossible, he did not hesitate to dissent, but his dissents were always on the merits. Nothing was more alien or distasteful to him than the idea of an *ad hominem* attack or a position that was not well grounded in sound legal argument.

The Judge's famous collegiality extended even more so to the internal operation of his chambers. Everyone who worked for him appreciated the daily morning routine of mail opening, coffee and doughnuts, and wide-ranging conversation (frequently about his days with Lyndon Johnson or his litigation war stories). We also enjoyed numerous lunches with him and our famous classic Southern Saturday morning breakfasts. To work for Judge Goldberg was to become a member of the family, permanently. From the time I worked for him until our last conversation on the Tuesday before his death, he never failed to ask about my husband, my children, my parents, and my siblings.

Opinion-writing was also a collective enterprise, no matter who was initially responsible for creating a first draft. Indeed, the Judge loved writing, and his opinions were famous for their propensity to eschew dry legalese and to employ often memorable phrases. The Judge would circulate opinion drafts among my co-clerks, John Fleming and Gary Rosenthal, and me, and the final product not only would meet his high analytical standards but also would display his unique flair. Finally, the Judge never released an opinion without giving Mrs. Goldberg the opportunity to read it. He valued her stylistic suggestions, but he cared even more about her general reactions. He did not want the law to be a priestly mystery, accessible only to the initiates; he wanted the citizenry at large to understand what the courts were doing, and Mrs. Goldberg helped him achieve that goal.

Sometimes that goal was hard to achieve. I particularly remember a massive patent-antitrust case that came to the court shortly before the end of my tenure with the Judge: *Yoder Brothers, Inc. v. California-Florida Plant Corp.*¹ Among the many issues presented were questions about exactly what makes a plant (here, a chrysanthemum) patentable and how the antitrust "passing-on" defense should be interpreted. The Judge, my

1. 537 F.2d 1347 (5th Cir. 1976), *cert. denied*, 429 U.S. 1094 (1977).

co-clerks, and I worked through the Great Chrysanthemum Case for many weeks until we were satisfied that we had reached the right result in light of the constitutional standard of invention, the statutes involved, and the facts presented. The final opinion was lengthy, but Judge Goldberg never believed in brevity for its own sake. He knew that the courts of appeals are usually the courts of last resort for litigants in the federal system, and he believed that people deserved a full explanation of why their case was handled the way it was.

A tribute to Judge Goldberg would not be complete without recognizing his great contribution to the enforcement of civil rights throughout his career on the court. Jack Bass, in his book *Unlikely Heroes*,² documents the ways in which the Judge helped to sustain the momentum from the first wave of civil rights cases that Judges John R. Brown, Elbert P. Tuttle, and John Minor Wisdom had begun in the Fifth Circuit. Regrettably, the job was far from complete by the time Judge Goldberg joined the court in 1966. In cases ranging from voting rights to employment discrimination to school desegregation, the Judge worked tirelessly to ensure that the ideal of "justice for all" was more than a formula of words. He believed that the federal courts had an obligation to keep their doors open to those whose rights under federal law were being denied. In all cases, however, he held the lawyers to high standards. It was not enough to tell him that a case was worthwhile. He insisted that the lawyers seeking redress pass through the same rigorous jurisdictional, standing, legal entitlement, and remedial screens that the law imposes on all. (Many a lawyer who argued before him in one of the beautiful old courtrooms in New Orleans will remember the incisive questions he posed and his habit of leaning back in his chair suddenly, or swinging around, when he became frustrated with the quality of the answers.)

It has been nearly twenty-one years since I received the telephone call that drew me into Judge Goldberg's life. He showed me, and countless others, what it was to be a consummate jurist, incisive in his intellect, compassionate in his outlook, and warm and friendly as a mentor and ultimately as a colleague. Our task now is to carry forward his example, his commitment, and his memory. For each person fortunate enough to be touched by his life, fulfilling that task will be an honor.

2. JACK BASS, *UNLIKELY HEROES: THE DRAMATIC STORY OF THE SOUTHERN JUDGES OF THE FIFTH CIRCUIT WHO TRANSLATED THE SUPREME COURT'S BROWN DECISION INTO A REVOLUTION FOR EQUALITY* (1981).

